

**Additional Views of Chairman F. James Sensenbrenner, Jr. on
H.R. 5005, the "Homeland Security Act of 2002"
Consular Affairs
July 12, 2002**

I strongly believe that all visa granting functions of the Department of State should be transferred to the new Department of Homeland Security. The State Department has repeatedly demonstrated that it cannot perform this function with due regard for national security. In fact, its core mission as a diplomatic agency is incompatible with the responsibility to make grant and denial decisions on the millions of visa requests it receives each year.

While lapses at the Immigration and Naturalization Service and other federal agencies that increased America's vulnerability to the World Trade Center and Pentagon terrorists attacks have received attention, only recently has attention been given to equally if not more serious failures at the State Department.

Fifteen of the Saudi terrorists who launched the 9-11 attacks had been granted visas by State Department consular officers in Saudi Arabia. Twelve of the terrorists were personally interviewed by the consular officers. A large scale investigation has just come to light into the sale of 70 visas at the U.S. embassy in Qatar, including one to the roommate of two of the 9-11 terrorists. The State Department has come under intense criticism for the "Visa Express" program in Saudi Arabia, which raises disturbing questions about the role of Saudi travel agencies in pre-screening visa applicants and which continues in operation today. Just last month, Deputy Secretary of State Richard Armitage sent a letter to the Justice Department rejecting the Foreign Terrorist Tracking Task Force's (FTTTF) recommendations to deny visas to specific aliens because "the information we have received states only that the FTTTF believes the applicants may pose a threat to national security . . ." It seems as if the events of September 11 have gone unnoticed by the State Department.

At the State Department, visas are considered first and foremost a device to curry favor with foreign governments. The more visas issued, the happier the foreign government. Consequently, State Department consular officers are under intense pressure from the Secretary of State and their ambassador and superiors to approve as many visas as possible. Employee evaluations are often tied to the number of visas issued without regard to adequate screening. In other words, the quantity of visas issued is valued more highly than the quality of interviews given.

Besides being under pressure to approve visas, consular officers are sent out into the field with wholly inadequate training. They receive no more than a few hours training in interviewing techniques, probably the single most important skill they will need in their jobs. On the other hand, FBI agents are given 51 hours of training in interviewing techniques and many follow-up mock interviews at the academy. Compounding these problems is the crisis in motivation. Now, the talent and educational credentials of foreign service officers are not open to question.

However, men and women are attracted to the foreign service because of their desire to be diplomats. They consider consular duty as “grunt work” to “pay their dues.” They generally dislike their jobs and leave for political and economic posts as soon as they are allowed.

There is unanimity among former consular officers that the State Department’s Visa Office should be transferred in its entirety to the Department of Homeland Security. What would be the benefits of such a move? First, the institutional pressures on consular officers to bias their visa decisions in favor of grants would evaporate. Consular officers would know that their job performance would in large part be graded based on their abilities to withhold visas from those aliens who would violate our immigration laws or do American harm. Second, consular staffs would be filled by law enforcement professionals who choose to perform this vital function, would take pride in and feel challenged by their jobs, and would want to make careers out of consular work.

The consular reforms contained in the Committee-approved bill unfortunately create an unwieldy hybrid consular office that will do nothing to remedy the office’s current ills. Giving the Department of Homeland Security only oversight authority over the consular service and the ability to issue regulations does nothing to change the fact that it will still be State Department foreign service officers who will have the responsibility of interviewing visa applicants and have the decision making power to grant visas. They will still be subject to inappropriate pressure to issue visas in order to comply with the diplomatic goals of their employer, the Secretary of State. Their career advancement will still be dependent on the good will of the ambassador. And, they will still be junior officers going through a rite of passage rather than seasoned law enforcement professionals with a zeal for uncovering fraud and deceit by aliens seeking visas. Thus, the Committee approved bill fails the fundamental test of true reform.

Now, there is one possible way in which the Committee-approved Visa Office can perform with appropriate regard for national security. A Department of Homeland Security law enforcement officer would have to review in-depth the file of every visa grant and also have to sit in on every interview and be able to ask questions. For, without doing so, how could he or she be able to personally observe the demeanor of the alien applicant, critical in determining the alien’s true intent, and be able to ensure that all pertinent questions were asked? While this is theoretically allowed for by the Committee bill, it is clear that it will never happen. For in order to have it happen, we would need a massive and costly increase in the federal bureaucracy. We would have to add to the federal workforce a large force of Department of Homeland Security personnel, without at the same time decreasing the number of State Department consular officers. It is not even clear whether our embassies and consulates would be physically big enough to house all these new employees. And it would be hugely inefficient. We would have in essence two individuals performing the work of one. In each and every case, the State Department employee would be superfluous.

For the above stated reasons, I believe it is crucial that visa granting responsibilities be transferred to the Department of Homeland Security.

Let me answer one obvious question. How could the transfer of the consular function take place in a smooth manner without disruption to the process of issuing millions of visas a year? Those State Department foreign service officers who would prefer to remain as consular officers would certainly be given the opportunity. However, it is to be expected that most would decline because of their lack of interest in the task. We would clearly need a transition period in order to give the Department of Homeland Security time to train a new corps of consular officers in language skills, interviewing techniques, and other skills. Many would likely come with a background in law enforcement. INS inspectors and investigators would certainly find a foreign posting attractive. I have therefore proposed that for a two-year period, current consular officers would be detailed from the State Department to the Department of Homeland Security. Gradually, these officers would be replaced and returned to the State Department as new employees come on board.

Separate Views of Mr. Hyde

I write separately to discuss two amendments that were adopted by the Committee at its markup of H.R. 5005.

I. Visa Processing

The President's homeland security plan, as reflected in the introduced version of H.R. 5005, would transfer to the Secretary of Homeland Security all responsibility for enforcing and administering the laws relating to processing of visa petitions at United States diplomatic and consular posts abroad. Section 403 of H.R. 5005 provides that the authority vested in the Secretary of Homeland Security shall be exercised through the Secretary of State.

A proposal was offered at the markup that would have dramatically altered the President's plan. This provision would have required Homeland Security personnel to do the actual adjudication of all visa applications at all our Embassies and consulates --- over 10 million applications per year. It would have all but eliminated the role of the Secretary of State in granting and denying visa applications, which is among the most important responsibilities of our Embassies and consulates.

In my view, this provision was well-intentioned but ultimately self-defeating. It would ultimately have required the creation of a whole new bureaucracy, and it would have caused enormous practical difficulties in our Embassies and consulates abroad. Even more important, it would have risked overwhelming Homeland Security personnel with non-homeland security functions and thereby make it difficult or impossible for them to perform their central mission.

I therefore offerend an amendment with Mr. Berman to provide for a compromise on the issue of visa adjudication by Homeland Security employees. This amendment, which was adopted by the Committee,

explicitly authorizes the assignment of Homeland Security employees in U.S. diplomatic and consular posts abroad. Rather than assume all visa processing functions, however, these employees will concentrate on identifying and reviewing cases that present homeland security issues.

Under the Hyde-Berman amendment, Homeland Security officers at U.S. Embassies and other overseas posts will investigate threats to the security of the United States and advise consular officers on these threats. They will ensure that these officers have access to information that would identify visa applications presenting possible homeland security questions, and Homeland Security employees would review these applications individually. This arrangement will preserve the essence of the Administration's proposal --- the sensible division of labor under which homeland security officers will be allowed to concentrate on homeland security functions --- while helping to ensure that security concerns are central to key decisions made abroad.

The Hyde-Berman amendment retains the requirement of the underlying Chairman's amendment for a study of the role of foreign nationals in visa processing and a report to Congress on this issue.

Finally, the Hyde-Berman amendment addresses a possible unintended consequence of turning over visa decisions to the Department of Homeland Security: the subjection of such decisions to various types of administrative and judicial review which do not apply to such decisions under current law. With over 3 million visa applications denied each year, this change would have enormous implications for our judicial system as well as for the security of our borders. The Hyde-Berman provision will ensure that denials of visa petitions in our overseas posts will continue to be non-reviewable.

By retaining a role for consular officers in adjudicating the millions of applications presenting no security-related issues, the President's plan will allow Homeland Security officers to perform their

homeland security mission. By authorizing the presence of Homeland Security officers in our overseas posts to identify and deal with homeland security issues, the Hyde-Berman amendment will ensure that the President's plan works as intended.

II. Law Enforcement Information Sharing.

The Committee also adopted an important amendment to section 203 of H.R. 2005, which gives the Secretary of Homeland Security access to information in the possession of other government agencies that is relevant to homeland security. The amendment adopted by the Committee takes the logical next step, by requiring the Secretary to promulgate regulations to ensure that this important information is shared with other federal, state, and local law enforcement agencies as necessary to guard against threats to homeland security.

The failure or inability of law enforcement and intelligence agencies to share information with one another prior to the September 11 attacks has been widely noted. Other legislation currently under consideration by Congress would take some tentative steps toward wider information sharing, but the problem is still very much with us. I am informed, for instance, that there are at least 41 federal and local law enforcement agencies with at least some jurisdiction in the District of Columbia, and that only a handful of these agencies are under any legal obligation to share information with any of the others.

The Committee amendment is simple and straightforward. It applies only to information to which the Secretary will have access under section 203, and it gives him the authority and the mandate to ensure that the information gets to the proper authorities so that it can be used to anticipate and counter threats to homeland security.

Information sharing among federal agencies can lead to complicated questions involving the disclosure of sources and methods,

as well as personal privacy. For this reason, the Committee provision does not legislate any particular formula for information sharing. These issues should be carefully considered as part of the rulemaking process. But experience has shown that if we leave these rules to the sole discretion of the agencies that possess the information, the information is unlikely to be shared. By placing the rulemaking process in the Department of Homeland Security, the Committee provision maximizes the likelihood that a reasonable balance will be struck among these competing concerns.

Henry J. Hyde

Additional Views of Rep. Bob Barr
on H.R. 5005, the "Homeland Security Act of 2002"

Privacy and Administrative Procedure

The Subcommittee on Commercial and Administrative Law, which I chair, held an oversight hearing on July 9, 2002, with respect to H.R. 5005, the Homeland Security Act of 2002. The hearing focused on administrative law, adjudicatory issues, and privacy ramifications of the proposed legislation. Three witnesses testified, including a representative on behalf of the Administration and two experts from academia.

The testimony received at the hearing, as well as the comments of the Subcommittee Members who attended the hearing, clearly highlighted the need for a privacy officer in the new Department of Homeland Security; the inclusion of procedural guidelines regarding the sharing of information; restrictions with respect to national identification card(s); and whistleblower protections, among other concerns. For example, the Administration's witness assured the Subcommittee that employees of the new Department of Homeland Security, "will retain whistleblower protection and other basic rights like equal pay for equal work and fair and equitable treatment."¹ Likewise, there was general support for implementing procedural safeguards with respect to personally identifiable information shared among governmental agencies, and to having a privacy officer appointed to ensure compliance with the Privacy Act and congressional oversight of such compliance.²

H.R. 5005, as reported by the House Judiciary Committee on July 10, 2002, includes provisions that adequately address these concerns, and I would urge their inclusion in the bill reported by the Select Committee. Specifically with respect to privacy concerns, the bill ensures the privacy officer will, in addition to information technologies, be responsible for assuring that all forms of technologies, including *Carnivore*-like surveillance systems, do not erode citizens' privacy protections. In addition, this officer will be charged with the responsibility to conduct privacy impact assessments of proposed rules when deemed appropriate by the Secretary.

The bill, as amended, contains a clear mandate that it **not** be construed to authorize the development of a national identification system or card. In light of the fact that the Administration witness would not issue a clear, definitive statement the Administration was not interested in, and would not pursue, a national identification card, I believe it is **essential** this Committee insist the final legislation include an unequivocal prohibition on a national identification card within the context or jurisdiction of the new Department of Homeland Security to be established by H.R. 5005.

¹*Administrative Law, Adjudicatory Issues, and Privacy Ramifications of Creating a Department of Homeland Security: Hearing on H.R. 5005 Before the Subcomm. on Commercial and Administrative Law of the House Comm. on Judiciary, 107th Cong. (2002) (statement of Mark Everson, Controller of the Office of Federal Financial Management, Office of Management and Budget).*

²*Id.* (statements of Jeffrey S. Lubbers, Professor of Law at American University Washington College of Law, and Peter P. Swire, Professor of Law at Ohio State University).

Finally, the bill as reported by our Committee also includes important provisions intended to better effectuate the administrative procedures and adjudicative processes of the new Department.

Additional Views of Rep. Zoe Lofgren
on H.R. 5005, the “Homeland Security Act of 2002”

I very much appreciate Chairman Sensenbrenner’s acceptance of my amendment transferring to the Office of Refugee Resettlement in the Department of Health and Human Services oversight responsibility for care, placement and custody of unaccompanied alien children. I believe that the Chairman’s bill has evolved significantly to take into consideration many of my concerns and I appreciate his cooperation and dedication to this immense undertaking.

I am pleased that this amendment has strong bipartisan support in the Judiciary Committee. Given the level of support from the Judiciary Committee, I fully expect any Homeland Security legislation emerging from further committee action to contain language on unaccompanied alien children that was accepted by the Judiciary Committee Chairman and the majority of the Members of the Committee. In accepting the amendment, the Judiciary Committee Members have expressed their belief that unaccompanied alien children would be better served in the Department of Health and Human Services than in the Department of Homeland Security. It is my sincere hope that as the members of further committees review the entirety of the Homeland Security legislative package that they consider the strong interests of the Members of the committee of jurisdiction.

Zoe Lofgren

July 11, 2002

Additional Minority Views of Rep. Sheila Jackson Lee on H.R. 5005, the "Homeland Security Act of 2002"

Treatment of Minors detained by the Department of Homeland Security

Minors may for unjustified reasons, come within the custody of the Department of Homeland Security. This Amendment would simply ensure that minors in custody of the DHS are provided access to independent counsel within 24 hours and the DHS endeavors to make contact with a parent or guardian as soon as possible. The Department of Homeland Security must take affirmative action towards assisting the minor in contacting the minor's parent or guardian.

Minors come to the U.S. for many reasons. Many are trying to establish some type of legal residency in order to be an anchor for other family members. Many children are coming to work and help support poverty stricken family members in the country of origin. Others are fleeing some type of oppression and are ultimately granted asylum and others are looking for an education and a future. Minors, both immigrant and nonimmigrant,, may come into the custody of the Department of Homeland Security - for example, through an unannounced raid. These minors should have these minimal procedural protections.

The INS houses approximately 450 to 600 juveniles at any one given time. An average daily population could be projected as 475 to 500. In FY 97, 3,149 unaccompanied juveniles were taken into custody; in FY 98, there were 5,323 custody events representing 4,457 different juveniles; and in FY 99, there were 5,644 custody events representing 4,607 different juveniles. Of May 25, 2000, there were 523 juveniles in INS custody nationwide. Of these, 87 were held in facilities in California. creasing numbers of children are trafficked by international criminal organizations for various types of exploitation. Most frequently, they are used as a cheap source of labor.

Congress should ensure that these minors are provided adequate representation and ensure that the Department of Homeland Security does all that it can to facilitate contact with parents or guardians. I would ask members to support similar provisions in legislation creating the Department of Homeland Security.

July 11, 2002

Additional Views of Rep. Sheila Jackson Lee on H.R. 5005, the "Homeland Security Act of 2002"

Creating a 5th Division of Immigration Affairs

Splitting the enforcement and service functions of the Immigration and Naturalization Service (INS) between two agencies raises concerns about coordination between the two separate functions that dictate that it be kept together in a single department. Splitting the services and enforcement functions raises serious concerns that the INS' service function will be left to wither on the vine in another agency without the attention and resources it deserves. An alternative proposal could have the entire INS (a) pulled from the Border and Transportation Security division; (b) placed in its own division headed by an Undersecretary for Immigration Security and Services; and (c) restructured as envisioned by H.R. 3231.

I offered an amendment that would create a fifth division to the Department of Homeland Security. I presented the amendment to the committee but withdrew it in order to allow the Committee to move forward. The proposal would be consistent with the INS in that it would incorporate the INS in whole into the Department of Homeland Security. It would accomplish this, however, in a manner different from the Administration's Proposal. The Jackson Lee Proposal would create a fifth division within the Department of Homeland Security titled the Division of Immigration Services and Security. This division would house three subdivisions titled; (1) Border Security; (2) Immigration Services and (3) Visa processing. This Division will separate the function of the INS allowing greater focus on the services component of this agency. This proposed Division would, however, preserve the unity of the Enforcement and Service function, as opposed to removing the service function out of the Homeland Security Department. Under this approach, the services and enforcement functions would be given equal priority within the new division. By raising this issue to the undersecretary level, the service function will have an advocate focused on the clear and defined mission of running the Immigration affairs of the nation. Additionally, the important coordination and communication that occurs between the enforcement and service functions of the INS will be maintained. The agency will be able to better share information and coordinate with other homeland security agencies and ensure a strong services function. This approach is also consistent with the President's goal of placing the entire INS in the DHS.

Also troubling is the prospect of placing the entire visa issuance function currently the responsibility of the State Department, within the exclusive authority of the Secretary of Homeland Security. Everyday, in consular posts around the world, issues arise as to how a policy or regulation should apply in a specific case. Cases often turn on questions that have a significant impact on U.S. foreign policy interests, U.S. business interests, or American values of family unity and humanitarian protection. These issues all lie within the expertise of the State Department and therefore should be resolved in consultation with it.

Furthermore, there are functions of the current INS that require a presence outside the United States. Primarily, these are refugee processing, orphan/adoption processing and the adjudication of

waivers. These functions need to be preserved as much as possible as functions of the State Department, which already possesses related expertise and has the needed infrastructure in the countries where these activities take place.

Placing the entire visa issuance function within the exclusive authority of the Secretary for Homeland Security will diminish the effectiveness of this important function. The Hyde-Berman Amendment, which passed during full committee markup, is the preferred alternative which can be reconciled with the administration's proposal. I spoke in favor of this amendment during the markup, which allows the administration of visa issuance function by State Department employees with the oversight and regulatory guidance of the Department of Homeland Security. I am willing to comport my amendment with the Hyde-Berman Amendment.

I am also willing to comport my amendment with the Lofgren-Jackson Lee Amendment which will allow the Administration for Children and Families (ACF) within the Department of Health and Human Services to be the lead agency with responsibility for unaccompanied alien children. These children, pose no threat to the interests of the United States and the expertise ACF has demonstrated in dealing with similar issues will serve the needs of the children better than the Department of Homeland Security .

The creation of the Department of Homeland Security is a chief priority of the Administration and Congress to achieve in a very short time. This is a difficult task integrating functions between the Justice Department and the Department of Homeland Security and the Judiciary Committee's expertise is crucial to providing proper guidance.

Sincerely

Congresswoman Sheila Jackson Lee
Member of Congress.

Additional Views of Rep. Waters on
H.R. 5005, the "Homeland Security Act of 2002"
Procurement Provisions of H.R. 5005
July 12, 2002

I am writing to request that the Members of the Select Committee consider a serious oversight in H.R. 5005. Specifically, I am concerned that the legislation does not explicitly refer to the Small Business Act and the protections it provides to minority- and female-owned small businesses.

As originally drafted, H.R. 5005 contains two procurement provisions. The first is in Section 301, "Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures." One of the responsibilities of the new Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures is "establishing priorities for, directing, funding, and conducting national research, development, and procurement of technology and systems" (emphasis added). The second place that refers to procurement is in Section 601 of H.R. 5005 as introduced. Section 601 sets out the primary responsibilities of the Under Secretary for Management. Among those responsibilities is procurement. However, there is no language in the proposed legislation to ensure that procurement complies with the provisions of the Small Business Act.

The Small Business Act, first enacted in 1953, was created to protect small businesses and assist them in becoming viable contributors to our economy. Language from the Act itself confirm this, as where it says: "The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed."

The language goes on to say, "It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation."

The need for protecting small businesses hasn't changed. If anything, we need to protect small businesses even more in our current market situation, where the technology firms have gone bust and more and more large companies—like Enron and WorldCom—are cooking the books. We all have small businesses in our districts, businesses that provide good jobs and help maintain our

economy. As we're developing the Department of Homeland Security, we must be sure to remember those businesses.

Therefore, I urge the Members of the Select Committee to make an amendment that would affect the two aforementioned sections of H.R. 5005. The suggested amendment language is as follows:

Page 17, after line 14, insert the following:

“ (5) Nothing in this Act shall reduce the effect of Section 637 of Title 15 of the United States Code.”

Page 30, line 12, insert at the beginning the following:

“(a)”

Page 31, after line 6, insert the following:

“(b) Nothing in this Act shall reduce the effect of Section 637 of Title 15 of the United States Code.”

The goal of this amendment is simply to ensure that the provisions of the Small Business Act relating to procurement opportunities for minority- and female-owned small businesses apply to government contracts of the new Department of Homeland Security.

Congresswoman Maxine Waters

ADDITIONAL VIEWS OF
THE HONORABLE JEFF FLAKE, MARK GREEN, BOB BARR, MELISSA HART
AND MIKE PENCE

ON

H.R. 5005, THE "HOMELAND SECURITY ACT OF 2002"

JULY 12, 2002

Simultaneous termination of visas and drivers licenses. - As cosponsors of a proposal to require states to issue driver's licenses that expire when a temporary visitor's legal stay concludes, we urge the Select Committee on Homeland Security to adopt this policy into the Homeland Security Act of 2002. We note that the administration's Director for Homeland Security has publicly advocated such a policy change. In order to encourage compliance by states, driver's licenses or other comparable identification documents issued by a state would not be accepted by a federal agency for identification purposes unless the state issuing the license were in compliance with the law.

Simply having a valid state driver's license, which has become the de facto identification card in the U.S., has made it easy for non-citizen visa holders to remain in the U.S. past the expiration date on their visas. A driver's license facilitates many legal interactions in the United States, from boarding an airplane to entering a government building to opening a bank account.

JEFF FLAKE
Member of Congress

MARK GREEN
Member of Congress

BOB BARR
Member of Congress

MELISSA HART
Member of Congress

MIKE PENCE
Member of Congress

**ADDITIONAL VIEWS BY THE HONORABLE LAMAR SMITH
CHAIRMAN OF THE SUBCOMMITTEE ON CRIME,
TERRORISM AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY**

July 11, 2002

As Chairman of the Subcommittee on Crime, Terrorism and Homeland Security, I fully support the actions taken by the Committee on Judiciary with regard to the transfer of only the Office of National Preparedness from the Federal Emergency Management Agency (FEMA). It is important that neither FEMA nor the new Department of Homeland Security are distracted from its core mission. FEMA has an important role to play when a natural disaster occurs. Its core mission is to provide assistance to states and local officials to address needs after a flood or hurricane. Moving the entire agency over to the Department of Homeland Security will also distract FEMA from this core mission.

FEMA is well-equipped to perform the duties and functions that it has traditionally performed, training first responders to address the aftermath of a disaster. However, it is not well-equipped to provide training for law enforcement and other first responders in how to recognize and disrupt possible terrorist threats.

Several first responders groups have expressed concerns about FEMA being the agency responsible for such training. The National Sheriff's Association testified before this Committee's Subcommittee on Crime, Terrorism and Homeland Security, "[t]he prevention, detection and apprehension of terrorists are law enforcement functions, and it is not appropriate for training and coordination to be assigned to the FEMA regime, where there are no such responsibilities. In the tragic event that there is a terrorist attack, that crisis is also a law enforcement responsibility. Sheriffs and Chiefs of Police are shocked that OMB would propose that FEMA should assume responsibility in these areas, where there is neither experience nor legal authority to act."

These same views have been reiterated by the International Brotherhood of Police Officers (IBPO). In a March 8, 2002 letter to the Subcommittee on Crime, Terrorism and Homeland Security the IBPO stated that it "is concerned that FEMA does not have the experience or understanding that a law enforcement agency has when investigating terrorism."

Additionally, the Police Executive Research Forum (PERF), a national organization of police executive professionals, that serves more than 50 percent of the country's population, explained that while it respects and values FEMA's role in disaster mitigation, it was troubled about FEMA assuming a new role in training in antiterrorism efforts by state and local law enforcement. PERF explained:

[t]he mission of FEMA and its area of expertise are based on disaster response and mitigation. While law enforcement, firefighting, emergency medical services, and HAZMAT agencies could all be first responders to a critical incident, the role

of law enforcement is unique in its crisis prevention, detection activities, and apprehension of suspects. Police agencies have primary responsibility for local intelligence gathering, public safety and maintaining public order before and during a crisis. They do this through combinations of community policing, criminal investigation, and emergency response. All of this must be done while meeting the day-to-day demands of a local police department. These efforts require [F]ederal support that is based on extensive experience and knowledge of local police operations and challenges. . . . The knowledge that comes from this experience cannot be easily transferred to an agency that is relatively new to law enforcement issues.

FEMA's experience and expertise have traditionally been in other areas of public safety and welfare than law enforcement. They have little history of effective partnership with local law enforcement on proactive efforts. Additionally, **FEMA** has indicated that regardless of where it is transferred in the Federal government, it will **not provide training in crisis management** for first responders; it will continue to provide **training in consequence management only**.

Last week, an article in the New York Times outlined in detail how the lack of a coordinated response, or coordinated communication systems, between state and local law enforcement and firefighters could have caused additional avoidable tragedies on September 11. We must make sure that any future terrorist threats are addressed with a coordinated response. The Department of Homeland Security can ensure this type of response by allowing the transferred **Office of Domestic Preparedness** to continue to provide the coordinated training for all state and local first responders in **both crisis and consequence management**.

I support the decision by the Committee on Judiciary to allow FEMA to continue to perform its mission as a separate agency. This will ensure that the creation of the new Department of Homeland Security will not detract from the important services the Federal government has traditionally provided for the American people after a natural disaster.